

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., et al.)	
)	
Defendants.)	
)	

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE EXPERT
TESTIMONY BASED ON BACTERIAL ANALYSES CONDUCTED IN VIOLATION
OF EPA, USGS AND OKLAHOMA STANDARDS (Dkt. No. 2090)**

Exhibit 11



**Environmental
Microbiology
Laboratory, Inc.**

Report for:

Mr. Roger Olsen
CDM (Camp Dresser & McKee, Inc.)
1331 17th Street
Suite 1200
Denver, CO 80202-1562

Regarding: Project: Illinois River Basin
EML ID: 175367

Date of Analysis: 10-14-2005

Approved by:

A blue ink signature of Dr. Harriet Burge.

Dr. Harriet Burge
Director of Aerobiology

A blue ink signature of Dr. David A. Bell.

Dr. David A. Bell
Laboratory President

This coversheet is included with your report in order to comply with AIHA and ISO accreditation requirements.

For clarity, we report the number of significant digits as calculated; but, due to the nature of this type of biological data, the number of significant digits that is used for interpretation should generally be one or two. All samples were received in acceptable condition unless noted in the Report Comments portion in the body of the report. Due to the nature of the analyses performed, field blank corrections of results is not a standard practice. The results relate only to the items tested.

Environmental Microbiology Laboratory, Inc. ("the Company") shall have no liability to the client or the client's customer with respect to decisions or recommendations made, actions taken or courses of conduct implemented by either the client or the client's customer as a result of or based upon the Test Results. In no event shall the Company be liable to the client with respect to the Test Results except for the Company's own willful misconduct or gross negligence nor shall the Company be liable for incidental or consequential damages or lost profits or revenues to the fullest extent such liability may be disclaimed by law, even if the Company has been advised of the possibility of such damages, lost profits or lost revenues. In no event shall the Company's liability with respect to the Test Results exceed the amount paid to the Company by the client therefor.

Document Number: 200091 - Revision Number: 4

Environmental Microbiology Laboratory, Inc.
 1150 Bayhill Dr., Suite 100, San Bruno, CA 94066
 (650) 829-5800 Fax (650) 829-5852 www.emlab.com

Client: CDM (Camp Dresser & McKee, Inc.)
 C/O: Mr. Roger Olson
 Re: Illinois River Project

Date and Time of Sampling: 08-20-2005 at 11:45am
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS21
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	11,000
Fecal Coliform	2,300
<i>E. coli</i>	500
<i>Enterococcus</i> Group	110
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

Interpretation of results is left to the company/ or persons who conducted the fieldwork.

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Client: CDM (Camp Dresser & McKee, Inc.)
 C/O: Mr. Roger Olson
 Re: Illinois River Project

Date and Time of Sampling: 08-2005 at 12:15pm
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS04A
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	22
Fecal Coliform	4
<i>E. coli</i>	< 2
<i>Enterococcus</i> Group	< 2
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

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Date and Time of Sampling: 09-15-2005 at 12:45pm
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 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS16
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	1,700
Fecal Coliform	230
<i>E. coli</i>	230
<i>Enterococcus</i> Group	300
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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Client: CDM (Camp Dresser & McKee, Inc.)
 C/O: Mr. Roger Olson
 Re: Illinois River Project

Date and Time of Sampling: 09-16-2005 at 1:15pm
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS20
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	170,000
Fecal Coliform	220
<i>E. coli</i>	110
<i>Enterococcus</i> Group	500
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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 Re: Illinois River Project

Date and Time of Sampling: 09-13-2005 at 1:45pm
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS02
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	30
Fecal Coliform	2
<i>E. coli</i>	< 2
<i>Enterococcus</i> Group	2
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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Date and Time of Sampling: 09-16-2005 at 2:15pm
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS21
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	500
Fecal Coliform	< 2
<i>E. coli</i>	< 2
<i>Enterococcus</i> Group	< 2
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS23
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	5,000
Fecal Coliform	800
<i>E. coli</i>	500
<i>Enterococcus</i> Group	1,700
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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 Re: Illinois River Project

Date and Time of Sampling: 09-13-2005 at 3:15pm
 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS05A
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	2,300
Fecal Coliform	230
<i>E. coli</i>	130
<i>Enterococcus</i> Group	50
<i>Salmonella</i> species	2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

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 Re: Illinois River Project

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 Date and Time of Receipt: 09-23-2005 at 9:30am
 Date and Time of Prep: 09-23-2005 at 4:00pm
 Date and Time of Analysis: 09-25-2005 at 3:05pm
 Date and Time of Report: 10-14-2005 at 5:00pm

Bacterial Identification Report

Location:	HFS22
Comments (see below)	None
Sample type	Water
	MPN* / unit
Total Coliform	23,000
Fecal Coliform	110
<i>E. coli</i>	110
<i>Enterococcus</i> Group	500
<i>Salmonella</i> species	< 2
<i>Staphylococcus aureus</i>	< 2
Sample size	100ml
Unit	MPN* / 100ml

*MPN = Most probable number

<i>Campylobacter</i> species	Absent
Sample size	100ml
Unit	N/A

**CFU = Colony forming unit

Comments:

MPN Method for Total Coliform, Fecal Coliform and *E. coli* : SM chapter 9221 B/E/F., 20th edition.

MPN Method for *Enterococcus* Group: SM chapter 9230B., 20th edition.

MPN Method for *Staphylococcus aureus* : Adaptation of SM chapter 9213B., 20th edition.

MPN method for *Salmonella* species: SM chapter 9260B., 20th edition.

Campylobacter identification method: BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

Interpretation of results is left to the company/ or persons who conducted the fieldwork.